"specification is silent as to any corresponding structure." The Examiner states that "Applicant discusses a hardware system (Figure 5) that can be used to 'tangibly embody LAN 110' [0019]" but contends that "Applicant does not describe any of the hardware components of the hardware system that performs the prediction function" and concludes that "this 'means for' lacks the necessary written description." It is respectfully submitted that the contentions here are clearly misplaced.

As is evident from the specification, the function in question is performed by LAN 110 or VAN 124, alone or in combination (see e.g., lines 26 and 27 of page 9 ("any one or more of the steps of method 300 can be executed by either LAN 110 or VAN 124, alone or in combination")). Moreover, as stated in the next sentence, the "results of any one or more steps are then evaluated according to logical routines either by LAN 100 or VAN 124, alone or in combination, to estimate the present time available for LAN-VAN communications," i.e., the time period during which the communications between the networks can be made. The specification then goes on to describe a number of specific examples. Elsewhere in the specification (e.g., page 5, line 22), it is stated that " intelligence is included in LAN 110 and VAN 124 to determine whether there is enough time to complete functions such as file synchronization or event a change of individual files."

It is respectfully submitted that it is clear from the foregoing that the intelligence in LAN 110 and/or VAN 112, i.e., an associated computer function, performs the prediction function in question. It is respectfully submitted that the Examiner errs in requiring that applicant describe "the hardware components of the hardware system that performs the prediction function." Applicant cannot properly be required to identify hardware components that perform this function, given that the function is performed by software. In fact, the situation is quite similar to those described in the section of the MPEP (MPEP §2181(III)(B)(1)) referred to above relating to functions performed by computers wherein the requirements of 35 U.S.C. 112, second paragraph, were held to be satisfied.

Similar remarks apply to the other "means" to which the Examiner has objected. In this regard, the "broad strokes" to which the Examiner refers with respect to the "transfer of data" function adequately describes this very common function. It is not

seen how the Examiner can seriously contend that one of ordinary skill in the art could not implement this function. Again, there is simply no requirement that a specific hardware system or specific circuitry be disclosed for performing what is clearly a straightforward function performed by any data communication system. Similar remarks also apply to the other "means" identified by the Examiner. In this regard, as indicated above, "intelligence" in the LAN 110 and/or VAN 112 determines whether a remaining time period exists and provides for an additional information transfer of a size that can be transferred within the remaining time period. See, for example, the passage quoted above from page 5 as well as the various examples set forth in the specification at pages 5-7.

In summary, it is respectfully submitted that the Examiner has misinterpreted the requirements of the MPEP §2181 and 35 U.S.C. 112, second paragraph, and it is respectfully submitted that the rejection of the claims on this basis be withdrawn.

Turning to the rejection of the claims under 35 U.S.C. 112, first paragraph, as "failing to comply with the enablement requirement," this rejection is respectfully traversed.

The Examiner states that "claims 1 and 7 recite a predicting means that predicts a time period based on the file size, data rate, and user preference" and that the "specification describes a scheduling that prioritizes the transfer of files based on file size, data rate, and user preference." The Examiner then contends that the "specification does not describe in any way how to predict a remaining time period based on the recited criteria."

It is respectfully submitted that the Examiner has misunderstood the claims. The "time period" in question is the initially recited time period that is predicted by the "predicting" means and not the "remaining time period" determined by the "determining" means. It is respectfully submitted that the predicting means does, in fact, predict the initial time period during which communications between the first and second network can be made based on both data rate and priority, as claimed. Accordingly, withdrawal of this rejection is respectfully solicited.

Turning to the various rejections on prior art, these rejections are respectfully traversed. First, it is noted that applicant has set forth in some detail arguments as to

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why these rejections are improper. The Examiner contends that these arguments have already been "formally addressed by the previous Examiner in his response, filed on 6.21.2007." It is respectfully submitted that such is not the case as will be evident from the discussion which follows. Moreover, the bare statements in the "Response to Arguments" section that various references disclose various features is not an answer to these arguments.

While applicant does not intend to repeat the previous arguments in full, reference is made to pages 1-3 of the last response for a discussion of the shortcomings of the Jiang and Van Leeuwen patents as references against the claims presented.

Further, as was also set forth in previous responses, claim 1 recites that the predicting means predicts "the time period based on both of the following: data rate and priority." In response, the previous Examiner contended that "although Jiang discusses data rate, he is not explicit as to utilizing a file priority" but that "Van Leeuwen explicitly states the use of data rate and file priority in predicting time periods." It is respectfully submitted that these contentions are not well taken. First, it is not seen that either reference discloses the "data rate" feature, i.e., predicting the time period for the transfer of data between networks based on the rate of which data is transmitted. As discussed in more detail below, this is simply not the thing as estimating a time period in the manner taught in Van Leeuwen. Similar remarks apply to the "file priority" feature; while as indicated above, and is also discussed in more detail below, Van Leeuwen makes reference to prioritization, it is not seen that this reference discloses this specific feature. Further, similar remarks also apply to claim 7 with respect to the "file size, data rate, and user preference" feature, and also to claim 21.

Considering the "data rate" feature in more detail, applicant respectfully disagrees with the contention that the teaching in Van Leeuwen "that the system includes priority procedures which take into account bandwidth used in information transfer and urgency of the transmission" meets the "data rate" limitation. Specifically, it is respectfully submitted that "bandwidth" is simply not the same thing as data rate, and, in this regard, given a particular communication system that places limitations on the available bandwidth, this does not mean that the data rate cannot be varied within this

bandwidth. Further, "urgency" is not the same thing as assigning a file priority to each of the files in question. In this regard, "file priority" can take into consideration factors other than urgency, as is explained in the instant application.

Again, it is respectfully pointed out that the "data rate" feature is included in each of claims 1, 7, and 21, and thus that these claims distinguish over the references cited for at least this reason.

It is noted that the Examiner has cited a new reference, the Shiobara patent, and has contended that "Shiobara discloses a network transmission system that improves the ability to schedule data transmissions between units that are operating under an authorized transfer completion time [column 4, lines <<21-27>>]." It is respectfully submitted that the teachings to which the Examiner refers concern an object of the Shiobara patent and are quite general in nature, and that these teachings in no way make up the deficiencies of the other patents as references against the claims presented. Moreover, the specific teachings of the Shiobara patent, wherein the limited time is taken as the upper digit and the count value of a counter which counts a constant clock as the middle digit and the number inherent to the transmission station as the lower digit, have nothing to do with the present invention or with the teachings of the other references. Further, lines 51-54 of column 5, merely state "a transfer data priority discriminator, which distinguishes whether it is to transfer time guaranteed data or transfer optimum data, is assigned to an attribute for data for which transfer has been requested" is not a disclosure of the features relied on for patentability. Thus, it is respectfully submitted that Shiobara is of limited relevance and certainly of no more relevance than the other references relied on.

Applicant also disagrees with the characterization of the teachings of Pyhalammi for the reasons set forth in some detail at pages 5 and 6 of the last response, some of which are discussed below.

As discussed above, none of the references disclose predicting a time period during which communications between a first and second network can be made based on data rate, and thus claims 1, 7 and 21 distinguish over the references cited for at least this reason. Similarly, claim 11 recites that the transferring of additional information is based on data rate (transmission data rate). (This feature is supported by
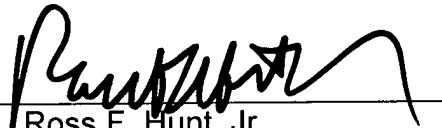
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e.g., page 10, lines 10-13). Independent claim 13 recites that the priority determination for prioritizing the files is based on both file importance and file size, and it is simply not seen that the subject matter of these claims is taught by the references relied on, for the reasons discussed in the last response.

In the latter regard, as discussed in the last response, Pyhalammi provides for selection of a user of a class of delivery of the content and states that this class of delivery "can be selected by the user on a transaction basis or subscription-based and pre-defined in a user profile" (emphasis added). The reference also refers to a "deliver NOW" delivery class and a specified "time delayed delivery class." It is respectfully submitted that these teachings, as well as the other teachings identified in the previous response, simply do not meet the terms of the claims, assuming arguendo that the proposed combination of references is a proper one.

Allowance of the application in its present form is respectfully solicited.

Respectfully submitted,

Date: March 20, 2008

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